

S.B. CIVIL WRIT PETITION NO.2977/2007
Sahabu Khan

Vs.

ACJ(SD) & JM No.2, Alwar & Ors.

DATE OF ORDER : 24.5.2007

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri M. Iqbal Khan for the petitioner.

Heard learned counsel for the
petitioner.

The petitioner has challenged
the order dated 8.2.2007 whereby his
application filed under Order 7 Rule
11 CPC in the election petition was
rejected by respondent no.1. Learned
counsel for the petitioner has argued
that the election petition does not
disclose any cause of action as to on

what date the additional child was born in the family of the petitioner after the cut off date i.e. 27.11.1995 in violation of Section 19(l) of the Rajasthan Panchayati Raj Act 1994 which is the ground of challenge of his election. Learned counsel relied on the judgment of this Court in Smt. Manju Sharma Vs. Suji Sharma & Anr., 1996(3) WLC (Raj.) 161 wherein it was held by this Court that election petition must disclose cause of action by pleading all material facts; petition not disclosing cause of action, would be liable to be rejected at the outset.

From perusal of the order, it appears that the learned trial court

has considered the application of the petitioner in the light of the pleadings in the plaint and noted that ration Card no.614 issued in favour of the petitioner on 27.2.2006 indicates age of his youngest son *mustakim* as 3 years and in the application for obtaining ration card submitted on 5.2.2001, age of mustakim, youngest son of the petitioner, was shown as 3 years in 2001. It prima facie shows that he was born in 1998 which certainly falls after the cut off date i.e.27.11.1995. In those facts, the learned trial court found that it cannot be said that election petition did not disclose any cause of action. The trial court also noted that the matter was on the stage of evidence

and the plaintiff-petitioner in support of his case, has already recorded the statement of seven witnesses whereas the defendant namely the petitioner herein filed the affidavits of five persons. The application thus appears to have been filed at a very late stage and therefore the same was rejected.

I have respectfully gone through the judgment cited hereinabove, which on facts is found to be distinguishable. Whether or not the requirements of Order 7 Rule 11 CPC have been met with, would have to be decided on pleadings and facts of each case individually.

In the present case, I do not find that the trial court has committed any error in rejecting the application.

The writ petition is dismissed.

(MOHAMMAD RAFIQ), J.

Skant/-